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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/596,116	03/04/2008	Jacob Guth	034547-0118	2271
23428 7590 12/19/2011 FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON, DC 20007				
EXAMINER GREENE, IVAN A				
ART UNIT		PAPER NUMBER		
1619				
MAIL DATE		DELIVERY MODE		
12/19/2011		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b><i>Applicant-Initiated Interview Summary</i></b>	<b>Application No.</b> 10/596,116	<b>Applicant(s)</b> GUTH ET AL.	
	<b>Examiner</b> IVAN GREENE	<b>Art Unit</b> 1619	

All participants (applicant, applicant's representative, PTO personnel):

(1) IVAN GREENE

(3) RACHEL PILLOFF

(2) CHERIE M. WOODWARD

(4) TARA GIZITZ, & HARM DECKERS

Date of Interview: 15 December 2011

Type: ☒ Telephonic ☐ Video Conference  
☐ Personal [copy given to: ☐ applicant ☐ applicant's representative]

Exhibit shown or demonstration conducted: ☐ Yes ☒ No.

If Yes, brief description: \_\_\_\_\_

Issues Discussed ☐ 101 ☒ 112 ☒ 102 ☒ 103 ☒ Others

(For each of the checked box(es) above, please describe below the issue and detailed description of the discussion)

Claim(s) discussed: All pending claims

Identification of prior art discussed: All prior art relied upon for rejection

#### Substance of Interview

(For each issue discussed, provide a detailed description and indicate if agreement was reached. Some topics may include: identification or clarification of a reference or a portion thereof, claim interpretation, proposed amendments, arguments of any applied references etc...)

See Continuation Sheet

**Applicant recordation instructions:** The formal written reply to the last Office action must include the substance of the interview. (See MPEP section 713.04). If a reply to the last Office action has already been filed, applicant is given a non-extendable period of the longer of one month or thirty days from this interview date, or the mailing date of this interview summary form, whichever is later, to file a statement of the substance of the interview

**Examiner recordation instructions:** Examiners must summarize the substance of any interview of record. A complete and proper recordation of the substance of an interview should include the items listed in MPEP 713.04 for complete and proper recordation including the identification of the general thrust of each argument or issue discussed, a general indication of any other pertinent matters discussed regarding patentability and the general results or outcome of the interview, to include an indication as to whether or not agreement was reached on the issues raised.

☐ Attachment

/CHERIE M WOODWARD/  
Primary Examiner, Art Unit 1647

## Summary of Record of Interview Requirements

### Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

### Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135 (35 U.S.C. 132)

#### 37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,  
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

### Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: The examiners clarified that the independent claim was not particularly limited by the number of oleosomes present, and because the oleosomes are present in all plant tissues and particularly abundant in the cells of oil-rich seeds (Final Rejection dated 11/08/2010, p. 5, first full paragraph) they would have reasonably been present in the oil of a cold pressed seed product. Applicants disagreed citing the exhibits filed with arguments on 12/05/2011 as evidence that oleosomes are not present in those cold pressed oil products. The examiners countered that the claims were not limited to those products. And specifically regarding the 102(b) rejection over LORANT, relying on Example 2 therein discloses an Apricot oil product, as opposed to the hemp oil, safflower oil, flax oil and Miglyol products submitted as evidence. Accordingly, such evidence was not considered commensurate with the claims, as currently presented.

The examiners then suggested that the primary issue in the case was that applicant's invention was directed to a purified oleosome product but the claims were not limited to a purified oleosome product. In an effort to forward prosecution in the instant case the examiners suggested the following three claim amendments: (1) remove the parentheses around the word oleosomes and delete the language "discrete spheres of vegetable bodies"; (2) recite the limitation "washed" as a specific method step (as, e.g., in paragraph [0021] as published); and/or (3) limit the specific percentage of oleosomes required in the composition (as, e.g., in instant claim 8; or paragraph [0023] as published).

Regarding the 112 2<sup>nd</sup> issue over the limitation "no additional emulsifier is used," the examiner maintained that the metes and bounds of this limitation are not clear, pointing to the specification paragraph [0003] (as published) stating that: "The emulsifying agent is generally part of the oil phase" which suggest to a person of ordinary skill in the art that it could be in the oil phase or aqueous phase. The examiner went on to explain that there are many different emulsifiers with a range of properties and a system of hydrophile-lipophile balance (HLB) system was established to determine the hydrophilic vs. lipophilic character of a give emulsifier. The examiner went on to suggest that a given emulsifier could emulsify an oil and aqueous phase for a period of time before separating. And it would not be clear to a person having ordinary skill in the art how long a given chemical species would have to provide emulsification of the oil/aqueous phases before separation to be considered an emulsifier. Applicants disagreed suggesting again that a person having ordinary skill in the art would know what is considered an emulsifier.

Regarding the arguments filed 12/05/2011, the examiner requested clarification of what specific part of the Advisory action the arguments on page 4 last line of full paragraph stating: "Advisory Action, page 2," were in reference to. Applicants responded that this referred to second to last paragraph of page 2 of the advisory action. And the examiner expressly disagreed with the arguments on page 5, lines 2-3, which stated: "the specification defines an emulsifier." The examiner provided clarification that the position of record is that the specification "described" an emulsifier but not defined an emulsifier (Advisory Action, page 2, second paragraph, line 3).

Finally, the examiner agreed to delay further action in the instant case until after the end of January 2012 or until applicants have filed a supplementary amendment in the case. And suggested that applicants could contact the examiner with any additional concerns.